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Civil Code and Related Subjects: Prescription

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but this is limited to things which at the time have no owner, *res nullius*. A thing which is susceptible of ownership may happen to be without an owner either by reason of the fact that it has not yet had any owner (wild life and game), or because its former owner has abandoned it.[13] In the latter situation, a claim of occupancy must be predicated on a preliminary proof of abandonment, which is not a matter to be taken lightly. Thus in *Donnell v. Gray*[14] a landowner was denied the ownership of certain oil well equipment merely because it had been left on his property for a considerable time after operations were finished. The owner's silence and failure to remove the equipment after a notice to vacate do not constitute an abandonment. In fact, the original owner could not have had any intention of giving it up because he later sold the equipment to the plaintiff in the present suit who was trying to get it from the resisting defendant. Judgment was rendered in favor of plaintiff.

PRESCRIPTION

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Acquirendi causa

For the ten-year acquisitive prescription in good faith and with just title, the Civil Code provides that the entry on a part of the estate establishes possession of the whole property as described in the deed.[1] Where the property involved is one single tract of land, properly described, the application of this principle is clear and simple. In the case of *Haas v. Dezauche*[2] the facts presented a variation of the problem, because in the one deed there were included several separate tracts of land which were contiguous but individually described. Entry had been satisfactorily established[3] on part but not all of this land; there was no showing of actual possession over the area in dispute. The court sustained the acquisitive prescription for the whole property on the ground that, despite the separate descriptions of the respec-

13. Art. 3421, La. Civil Code of 1870.
14. 41 So.(2d) 66 (La. 1949).
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1. Art. 3437, La. Civil Code of 1870: "It is not necessary, however, that a person wishing to take possession of an estate should pass over every part of it; it is sufficient if he enters on and occupies a part of the land, provided it be with the intention of possessing all that is included within the boundaries."
2. 214 La. 259, 37 So.(2d) 441 (1948).
3. This possession was shown by the cutting and removing timber from swamp lands, on the authority of Veltin v. Haas, 207 La. 650, 21 So.(2d) 862 (1945). See The Work of the Louisiana Supreme Court for the 1944-1945 Term (1946) 6 LOUISIANA LAW REVIEW 521, 580.

tive units, the entire tract of land formed a single estate in the deed and in the intention of the parties. Consequently the possessor was entitled to the presumption in Article 3498[4] so that the actual possession of part constituted a full possession of the whole and extended to the limits described in the deed.

Possession—Adverse or Precarious

It is one of the well established principles of acquisitive prescription that the claimant's possession must be *as owner*[5] so that an actual possession which acknowledges any other owner is precarious[6] and is no possession at all for purposes of prescription. However, the application to actual facts is still troublesome. Thus, in *Frost Lumber Industries v. Harrison*,[7] the district court's judgment was reversed by the court of appeal,[8] whose judgment was in turn reversed by the supreme court. Mariah Harrison was the widow in possession of the community property, as owner of one-half and as usufructuary of the other undivided one-half. She sold her undivided one-half in 1913, but neither her vendee nor the subsequent transferees asked for a partition and possession until the present suit was instituted in 1946. Mariah Harrison continued to live on the whole property and then claimed the reacquisition of that undivided one-half interest by the thirty-year prescription. While there is no need to have good faith or just title for this thirty-year prescription, it is necessary to have legal possession.[9] This, the court held, she did not have because the facts showed that Mariah Harrison had continued on the land by the sufferance of her vendee, and this made her possession a "precarious" one as to that one-half interest (while she continued as usufructuary of the other one-half owned by her children). It is possible for a precarious possession to be converted into an adverse legal possession which could start a prescription. However, this cannot be done "without some overt act or notice by which her vendee could become apprised of the change in her quality as a precarious possessor."[10] In the facts of the present

4. Art. 3498, La. Civil Code of 1870: "When a person has a title and possession conformably to it, he is presumed to possess according to the title and to the full extent of its limits." See Leader Realty Co. v. Taylor, 147 La. 256, 265, 84 So. 648, 651 (1920).

5. Arts. 3436, 3487, La. Civil Code of 1870.

6. Arts. 3441, 3489, 3490, La. Civil Code of 1870.

7. 41 So.(2d) 674 (La. 1949).

8. 35 So.(2d) 832 (La. App. 1948). The court of appeal considered that the facts entitled claimant to the benefit of the presumption in Article 3488 that a possession is presumed to be as owner.

9. Art. 3500, La. Civil Code of 1870.

10. 41 So.(2d) 674, 676 (La. 1949).

case, the court did not find this necessary element of any outward sign or affirmative act which would have served as notice of terminating the precarious possession and of starting a new adverse possession as owner.

SALE

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Property Description

In the case of *Williams v. Bowie Lumber Company*[1] the plaintiffs were descendants of one Martin who had conveyed to one Dowman "all the property owned by him in the Parish of Lafourche" (except certain described units), and they now claim ownership on the basis of inadequate description of the property. Since heirs are included within the term "parties," it was held that they could not attack the conveyance of their ancestor, because an omnibus description is binding *between the parties.* Other cases which had held conveyances invalid for lack of adequate description were distinguished as involving the rights of third persons. If Martin would have made a subsequent sale of the same property to a third person, with full description and proper recordation, the claim of such person might have come into the latter category, but that is not what the court had to consider in the present case.

Merchantable title

Three cases reiterated the rule that a vendor does not have a right of action for specific performance or for damages against a vendee who refuses to accept a tendered title if this title is suggestive of serious litigation.

In the case of *Schaub v. O'Quin*,[2] the title which plaintiff was offering had been obtained at the private sale of a minor's immovable property, for which the tutor had obtained the undertutor's concurring affidavit instead of ruling him into court as required by Act 209 of 1932.[3] In the case at bar, the validity of this title was not in issue and the court could not pass upon it, but until there was an adjudication as to compliance or substantial compliance there remained the direct possibility of such a law suit. The title was therefore "suggestive of serious future lit-

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1. 214 La. 750, 38 So.(2d) 729 (1948).

2. 214 La. 424, 38 So. (2d) 63 (1948), noted in (1949) 9 LOUISIANA LAW REVIEW 563.

3. Dart's Stats. (1939) §§ 4844-4847.5.